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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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11 MICHAEL RENO, et al.,
12 Plaintiff(s),

13 v.

14 WESTERN CAB COMPANY, et al.,
15 Defendant(s).

Case No.: 2:18-cv-00840-APG-NJK

Order

[Docket Nos. 135, 142]

16 This case involves FLSA claims brought for a collective action based on alleged minimum
17 wage violations arising out of taxi drivers being forced to use their tip money to pay for gasoline.
18 Pending before the Court is Plaintiffs' renewed motion to compel discovery, which also includes
19 a request to extend discovery deadlines. Docket No. 135. Defendants filed an untimely response.
20 Docket No. 141.¹ Plaintiffs filed a reply. Docket No. 145. The motion is properly resolved
21 without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion to compel
22 is **GRANTED** in part and **DENIED** in part. With respect to aspects of the motion to compel that
23 are granted, Defendants must comply by December 9, 2019. The request to extend deadlines in
24 the scheduling order is **DENIED** without prejudice.

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26 ¹ Defendants have also now filed a motion to reopen the deadline for filing their untimely
27 response to the motion to compel. Docket No. 142. Plaintiffs oppose this motion. Docket No.
28 146. The Court shares some of Plaintiffs concerns with Defendants' failure to comply with a clear
deadline. The Court **CAUTIONS** defense counsel that he must comply with all deadlines moving
forward, but the Court will consider the responsive brief despite its untimeliness in this instance.
Accordingly, the motion to reopen (Docket No. 142) is **GRANTED**.

1 **I. STANDARDS**

2 “[B]road discretion is vested in the trial court to permit or deny discovery.” *Hallett v.*
3 *Morgan*, 296 F.3d 732, 751 (9th Cir. 2002); *see also Crawford-El v. Britton*, 523 U.S. 574, 598
4 (1998). The scope of discovery is limited to nonprivileged matter that is relevant to a party’s claim
5 or defense and is proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). The party seeking
6 to avoid discovery bears the burden of showing why that discovery should not be permitted.
7 *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975); *see also Carr v. State Farm Mut.*
8 *Auto. Ins. Co.*, 312 F.R.D. 459, 469 (N.D. Tex. 2015) (addressing burdens following 2015
9 amendments to discovery rules). The party resisting discovery must specifically detail the reasons
10 why each request is irrelevant or otherwise objectionable, and may not rely on boilerplate,
11 generalized, conclusory, or speculative arguments. *F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544,
12 553 (D. Nev. 2013). Arguments against discovery must be supported by “specific examples and
13 articulated reasoning.” *U.S. E.E.O.C. v. Caesars Ent.*, 237 F.R.D. 428, 432 (D. Nev. 2006).

14 **II. ANALYSIS**

15 The instant discovery motion raises myriad disputes for which Plaintiffs seek judicial
16 resolution.² The Court will address each dispute in turn below.

17 A. ESI for Payroll and Expense Records

18 The first dispute before the Court involves Plaintiffs’ requests for production seeking all
19 payroll records (Request for Production No. 1) and records showing the cost of gasoline (Request
20 for Production No. 25). *See* Mot. at 6-7. This dispute has two components. First, the parties
21 dispute whether such discovery should be taken with respect to all opt-in plaintiffs or just a subset
22 of them. Second, the parties dispute whether Defendants have sufficiently complied with these
23 requests, particularly with respect to the form of the discovery provided.

24 As to the first issue, courts do not generally permit full discovery with respect to FLSA
25 opt-in plaintiffs because doing so would undermine the purposes of a collective action. *See, e.g.,*

27 ² Perhaps given the presence of numerous divergent issues being presented in a single
28 motion, the papers are at times difficult to follow. The Court reminds counsel that requests for
different relief should generally be filed in separate documents. *See* Local Rule IC 2-2(b).

1 *Cardoza v. Bloomin' Brands, Inc.*, 1141 F. Supp. 3d 1137, 1146 (D. Nev. 2015) (discussing
2 *Cranney v. Carriage Servs., Inc.*, 2008 WL 2457912 (D. Nev. June 16, 2008)). Plaintiffs' counsel
3 themselves advocated for a limited approach earlier in this litigation. *See* Docket No. 79 at 2-3.
4 Nonetheless, Plaintiffs now seek this discovery with respect to all opt-in plaintiffs. No explanation
5 is provided except Plaintiffs' contention that compliance with these particular discovery requests
6 is less burdensome on Defendants than other opt-in discovery will be for which representative
7 sampling could be appropriate. *See* Reply at 3. The Court declines to take such a request-by-
8 request approach, which will inevitably lead to disagreement between counsel and unnecessary
9 motion practice. *But see Cardoza*, 141 F. Supp. 3d at 1145 ("Discovery is supposed to proceed
10 with minimal involvement of the Court"). Instead, the parties must meet-and-confer on an
11 appropriate subset of opt-in plaintiffs with respect to whom they will take discovery. The scope
12 of these two discovery requests will be limited accordingly.

13 As to the second issue, a discovering party may specify the form of electronically stored
14 information ("ESI") that it seeks; "[h]owever, in the event the parties are unable to agree to a
15 format for ESI, Rule 34(b) allows the responding party to produce information either in the form
16 in which it is ordinarily maintained or in a form that is reasonably usable unless otherwise ordered
17 by the court." *FSP Stallion 1, LLC v. Luce*, Case No. 2:08-cv-01155-PMP-PAL, 2009 WL
18 2177107, at *4 (D. Nev. July 21, 2009); *see also* Fed. R. Civ. P. 34(b)(2)(E)(ii). In this case,
19 Plaintiffs' motion is predicated on an earlier production of paper documents in response to these
20 requests for production. *See* Mot. at 4. Defendants have since supplemented their initial discovery
21 responses (with respect to the named Plaintiffs) with electronic data after the instant motion was
22 filed. *See* Resp. at 11. Plaintiffs in reply indicate that such production remains insufficient. *See*
23 Reply at 5. The Court declines to weigh in on this issue given the changed circumstances and will
24 instead allow for further meet-and-confer efforts between counsel. *Cf. Garcia v. Serv. Emps. Int'l*
25 *Union*, 332 F.R.D. 351, 355 n.7 (D. Nev. 2019) ("additional in-person or telephonic conferences
26 are generally required when the circumstances of a discovery dispute have evolved"). Indeed, this
27 is the type of issue that counsel should be able to resolve without judicial involvement.
28 Accordingly, the Court will **DENY** without prejudice the motion to compel with respect to the

1 format of the responses to these discovery requests. Counsel must continue the meet-and-confer
2 process on this issue.³

3 B. Affirmative Defenses

4 Plaintiffs also seek an order compelling further responses to two requests for production
5 related to Defendants' affirmative defenses. *See* Mot. at 10. Request for Production No. 2 seeks
6 "copies of all releases, waivers, or settlement agreements that purport to release or settle any actual
7 or potential claim of any taxicab driver of the defendant for unpaid wages . . ." *See* Mot. at 80.
8 Request for Production No. 7 provides that, "[f]or each affirmative defense asserted by the
9 defendant, separately identify and produce all documents relevant to the defense." *See* Mot. at 82.
10 During the meet-and-confer process, the latter request was narrowed to three specific affirmative
11 defenses. *See* Mot. at 10. The Court will address each request for production in turn below.

12 1. Request for Production No. 2

13 As to the request specific to settlements and the like, Defendants do not directly address
14 that request in responding to the motion to compel. Nonetheless, Defendants make representations
15 as to various documents produced that are responsive to this request. *See* Resp. at 14. Given this
16 lack of clarity and Defendants' burden of persuasion in responding to the motion, the Court will
17 **GRANT** this aspect of the motion to compel. Defendants must produce all responsive documents
18 (to the extent they have not all been produced already) and must provide a certification that all
19 responsive documents have been produced. *See* Fed. R. Civ. P. 26(g).

20 2. Request for Production No. 7

21 As to the more general request now in dispute, the Court is befuddled by the request itself
22 and by the parties' positions. As noted above, this request seeks "all documents relevant" to three
23 affirmative defenses. A request for production must identify "with reasonable particularity each
24 item or category of items" to be produced. Fed. R. Civ. P. 34(b)(1)(A). It is entirely improper to
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26 ³ The motion to compel makes an alternative request to compel further responses regarding
27 fuel cost information with respect to Request for Production No. 27 and Request for Production
28 No. 28. *See* Mot. at 8-9. The information at issue therein appears to be duplicative of the
information at issue in Request for Production No. 25, *see* Mot. at 10, for which the meet-and-
confer process remains on-going. As such, the Court declines to opine on this alternative request.

1 frame a request for production as requiring a litigation opponent to determine and produce “all
2 relevant documents.” *See Williams v. Adams*, Case No. 1:05-cv-00124-AWI-SNS, 2009 WL
3 1220311, at *10 (E.D. Cal. May 4, 2009); *see also Parson v. Jefferson-Pilot Corp.*, 141 F.R.D 408,
4 412 (M.D.N.C. 1992) (“Broad and undirected requests for all documents which relate in any way
5 to the complaint are regularly stricken as too ambiguous”; a request would be improper if it were
6 “so open-ended as to call simply for documents related to a claim or defense in this action”). The
7 request now before the Court for “all documents relevant” to these affirmative defenses is defective
8 on its face.

9 Defendants do not raise this facial defect and instead characterize the request as a
10 “contention interrogatory” seeking the documents on which Defendants may rely to support the
11 affirmative defenses. *See Resp.* at 14-15. The discovery at issue is a request for the production of
12 documents and not an interrogatory. To the extent Plaintiffs seek the identification of the
13 documents that Defendants will use to support these affirmative defenses, then that is a matter to
14 be addressed by propounding a contention interrogatory. *See Fed. R. Civ. P. 33(a)(2)*.⁴ It does not
15 appear from the papers that a contention interrogatory has been served. Moreover, the Court notes
16 that the parties already have an affirmative disclosure obligation with respect to documents on
17 which they intend to rely to support their defenses even in the absence of a request for production.
18 *Fed. R. Civ. P. 26(a)(1)(A)(ii)* (outlining initial disclosure obligations); *see also Fed. R. Civ. P.*
19 *26(e)(1)* (outlining supplemental disclosure obligations).

20 Given the circumstances, the Court will **DENY** this aspect of the motion to compel. The
21 parties must comply with their initial disclosure obligations. To the extent Plaintiffs seek
22 information obtainable through a contention interrogatory, then they must comply with the
23 interrogatory procedures.

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28 ⁴ Parties are allowed a limited number of interrogatories. *See Fed. R. Civ. P. 33(a)(1)*. It
is not clear whether further interrogatories remain available to Plaintiffs at this juncture.

1 C. Identification and Contact Information of Former Supervisors

2 Plaintiffs next seek an order compelling a further response from Defendants to an
3 interrogatory seeking the identity and contact information of former supervisors. Mot. at 11.⁵ In
4 particular, Defendants’ interrogatory response identified John Hickman, but provided no contact
5 information for him. *See id.* Defendants do not dispute that they must provide this contact
6 information, but only state tangentially that they have identified Mr. Hickman’s current place of
7 employment. *See Resp.* at 5. Defendants having provided no argument as to why they should not
8 be compelled to provide Mr. Hickman’s contact information, the Court will **GRANT** this aspect
9 of the motion to compel.

10 D. Employer Status of Individual Defendants

11 Plaintiffs next seek an order compelling discovery with respect to more than a dozen
12 requests for production served on five individual defendants. *See Mot.* at 11-22. The bulk of this
13 “argument” consists of pages of single-spaced recitation of one set of the requests for production
14 and the responses thereto, which is then followed by generalized argument. Defendants’ response
15 to the motion similarly provides generalized argument that does not address the specific discovery
16 in dispute. *Resp.* at 15-20. Because the parties have failed to provide meaningfully developed
17 argument that is specific to each of the discovery requests in dispute, the Court’s ability to provide
18 judicial oversight is hindered. At the end of the day, however, the burden of persuasion is squarely
19 on Defendants in seeking to avoid discovery. *See, e.g., Blankenship*, 519 F.2d at 429. As discussed
20 below, Defendants’ generalized argument does not satisfy that burden.

21 Defendants first argue that this discovery is not relevant. *See Resp.* at 15-16. Discovery
22 must be “relevant to any party’s claim or defense,” *In re Bard IVC Prods. Liab. Litig.*, 317 F.R.D.
23 562, 563-64 (D. Ariz. 2016), a standard that remains broad in scope, *e.g., Fed. Nat’l Mortg. Assoc.*
24 *v. SFR Invs. Pool I, LLC*, Case No. 2:14-cv-02046-JAD-PAL, 2016 WL 778368, at *2 n.16 (D.
25 Nev. Feb. 25, 2016). Defendants’ argument here is premised on their distinction between joint

26 ⁵ In violation of Local Rule 26-7(a), Plaintiffs did not provide the text of the interrogatory
27 at issue or the response thereto. The Court will exercise its discretion to resolve this dispute in this
28 instance notwithstanding that deficiency, but counsel is cautioned to comply with the local rules
moving forward.

1 employer liability and individual liability of managers. *See* Resp. at 15-16. According to
2 Defendants, the standard that applies in this case involves an inquiry into whether “the individual
3 had supervisory authority of the complaining worker and was responsible in whole or in part for
4 the alleged violation or had control over the employer’s compliance with the Act. When it comes
5 to owners, courts engage in a detailed examination of the facts concerning the owner’s involvement
6 tin [sic] the operation of the business and the work of the employees.” *Id.* at 16 (citations omitted).⁶
7 No explanation has been provided by Defendants why any of the particular discovery requests in
8 dispute is not relevant to those inquiries. It seems pretty clear that a request, *inter alia*, regarding
9 an individual’s “duties and responsibilities” (Request for Production No. 3) or “involvement with
10 the determining, enforcing, or adjusting the compensation policies” (Request for Production No.
11 12) would be pertinent to the standards that Defendants themselves articulated. Having failed to
12 show that any particular request is irrelevant, Defendants have not met their burden of showing
13 they can avoid discovery on this basis.

14 Defendants next argue that this discovery is impermissible because Plaintiffs’ counsel
15 already knows the roles of the individual defendants based on deposition testimony and the
16 production of a redacted management agreement. *See* Resp. at 18-20. Although not so articulated,
17 Defendants’ argument appears to be aimed at showing that the discovery is unreasonably
18 cumulative, disproportional, or unduly burdensome. *See* Fed. R. Civ. P. 26(b)(1), Fed. R. Civ. P.
19 26(b)(2)(C)(i). The foundational problem with this argument is that a factual basis has not been
20 provided on which to base such objection. *Cf. Nationstar Mrtg., LLC v. Flamingo Trails No. 7*
21 *Maintenance Assoc.*, 316 F.R.D. 327, 334 (D. Nev. 2016). Instead, Defendants’ position appears
22 to be that as a general matter a discovering party is required to accept as true any deposition
23 testimony provided and, further, that the responding party can pick-and-choose one redacted
24 document to produce rather than providing all responsive documents. Those propositions are
25 fundamentally flawed. The starting point in the discovery rules is that a party is generally entitled
26 to engage in multiple forms of discovery as a means of testing the opposing party’s positions, such

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28 ⁶ Because the outcome is the same even taking Defendants’ position as true, the Court need not actually resolve the parties’ dispute as to the precise legal standard for establishing liability.

1 that it is generally permissible to obtain document-based discovery and deposition testimony on
2 the same subject. *See, e.g., Riverport Ins. Co. v. State Farm Fire & Cas. Co.*, Case No. 2:18-cv-
3 00330-GMN-NJK, 2018 WL 6435883, at *2 (D. Nev. Dec. 6, 2018). Such discovery is curtailed
4 upon a showing that it is unreasonably cumulative or duplicative. *See, e.g., Fed. R. Civ. P.*
5 *26(b)(2)(C)*. No reasonable showing has been made here why Plaintiffs should be cabined in this
6 case to only depositions and obtaining one redacted document; therefore, Defendants have not met
7 their burden of showing that they can avoid discovery on this basis.

8 Plaintiffs also argue that the Court should overrule Defendants’ objections of attorney-
9 client privilege and work-product protection. *See Mot.* at 20-21. In particular, Plaintiffs assert
10 that no privilege log has been produced and that Defendants have otherwise failed to substantiate
11 those objections. *See id.* Defendants did not respond to this argument. *See Resp.* The party
12 raising attorney-client privilege or work-product protection bears the burden of substantiating
13 those claims. *See, e.g., Phillips v. C.R. Bard, Inc.*, 290 F.R.D. 615, 634 (D. Nev. 2013). Having
14 failed to do so here, Defendants’ invocations of attorney-client privilege or work-product
15 protection are rejected.

16 Lastly, Plaintiffs argue that Defendants’ redactions to the management agreement were
17 improper and Plaintiffs seek production of an unredacted copy. *Mot.* at 21-22. Defendants provide
18 no meaningful response attempting to justify the redactions. As best the Court can gather,
19 Defendants’ position is that the redactions are appropriate on the grounds that there is confidential
20 business information. *See Resp.* at 17-18. Such an argument fails because no showing has been
21 made that the confidentiality of that information cannot be protected through the issuance of a
22 stipulated protective order. *See, e.g., in re iPhone/iPad Consumer Privacy Litig.*, Case No. 11-
23 MD-2250-LHK (PSG), 2013 WL 843833, at *6 (N.D. Cal. Mar. 6, 2013). It also appears that
24 Defendants may have redacted this document on the basis of irrelevance. *See Resp.* at 5 (noting
25 that the specific “management provision” is not redacted). Producing parties are not generally
26 allowed to redact otherwise responsive documents on the basis that they also contain irrelevant
27 material. *E.g., Laub v. Horbaczewski*, 331 F.R.D. 516, 526 (C.D. Cal. 2019). In short, sufficient
28 justification for the redactions has not been advanced.

1 Accordingly, the Court will **GRANT** this aspect of the motion to compel in that documents
2 responsive to these requests must be produced and an unredacted version of the management
3 agreement must be produced.

4 E. Extension of Discovery

5 Plaintiffs lastly seek an extension of deadlines set in the scheduling order. *See* Mot. at 22.
6 In so doing, Plaintiffs do not identify the applicable standards or explain how they have been met.
7 *See id.* Plaintiffs also do not comply with the requirements for seeking such an extension, such as
8 identifying the discovery taken to date and the discovery remaining. *See* Local Rule 26-4. Indeed,
9 Plaintiffs have not even proposed an actual schedule for completing discovery. *Compare* Local
10 Rule 26-4(d) (requiring the submission of a proposed schedule) *with* Mot. at 23-24 (asking for 90-
11 day, 120-day, or 180-day extensions). Accordingly, the Court will **DENY** this request without
12 prejudice to the filing of a proper motion or stipulation that addresses the applicable standards and
13 complies with the local rules.

14 **III. CONCLUSION**

15 For the reasons discussed above, the motion to compel is **GRANTED** in part and **DENIED**
16 in part. With respect to aspects of the motion to compel that are granted, Defendants must comply
17 by December 9, 2019. The request to extend deadlines in the scheduling order is **DENIED** without
18 prejudice.

19 IT IS SO ORDERED.

20 Dated: November 25, 2019

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23 Nancy J. Koppe
24 United States Magistrate Judge
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